TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~504~~ 222

HERMAN FLEITMAN, EWALD FLEITMAN, AND FREDERICK WINKHAUS, PLAINTIFFS IN ERROR,

vs.

CHESTER A. ARTHUR, COLLECTOR OF THE PORT OF NEW YORK.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED OCTOBER 4, 1878.

SUPREME COURT OF THE UNITED STATES.

No. 504.

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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the judges of the circuit court of the United States for the southren district of New York, greeting:

Because in the records and proceedings and also in the rendition of the judgment of a plea which is in the said circuit court before you, between Herman Fleitmann, Ewald Fleitmann, and Frederic Winkhaus, plaintiffs, and Chester A. Arthur, defendant, a manifest error hath happened, to the great damage of the said plaintiffs, as by their complaint appears, we being willing that the error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the second Monday of October, eighteen hundred and seventy-eight, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done thereon to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the 14th day of March, in the year of our Lord one thousand eight hundred and seventy-eight.

[SEAL.] JOHN I. DAVENPORT, *Clerk.*

The foregoing writ is hereby allowed.
N. Y., March 14th, 1878.

SAM'L BLATCHFORD.

(Indorsed:) 3037. U. S. Supreme Court. Herman Fleitmann
2 et al., plaintiffs in error, against Chester A. Arthur, defendant in error. Original writ of error. Stanley, Brown & Clarke, att'ys for pl'ffs, &c., 195 B'way.

Due service of a copy of the within is hereby admitted.
N. Y., March 18, 1878.

STEWART L. WOODFORD,
U. S. Att'y, N. Y. S. D.

United States circuit, southern district of New York, ss:

I, John I. Davenport, clerk of the circuit court of the United States for the southern district of New York, in the second circuit, by virtue of the foregoing writ of error and in obedience thereto, do hereby certify that the following pages, numbered from three to thirty-four, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of Herman Fleitmann, Ewald Fleitmann, and Frederick Winkhaus, plaintiffs in error, against Chester A. Arthur, defendant in error, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this 19th day of August, in the year of our Lord one thousand eight hundred and seventy-eight, and of the Independence of the said United States the one hundred and third.

[SEAL.] JOHN I. DAVENPORT, *Clerk.*

3 *Summons.*

Superior court of the city of New York.

HERMAN FLEITMANN, EWALD FLEITMANN, and Frederick Winkhaus, plaintiffs,
against
CHESTER A. ARTHUR, DEFENDANT.

To the defendant:

You are hereby summoned and required to answer the complaint in this action, which will be filed in the office of the clerk of the superior court of the city of New York, at the court-house in said city, and to serve a copy of your answer to the said complainant on the subscribers, at their office, No. 16 Wall street, New York City, within twenty days after the service of this summons on you, exclusive of the day of such service; and if you fail to answer the said complaint within the time aforesaid the plaintiffs in this action will apply to the court for the relief demanded in the complaint.

Dated May 14, 1874.

STANLEY, BROWN & CLARKE,
Plaintiffs' Attorneys.

(Endorsed:) 3037. N. Y. superior court. Herman Fleitmann et al. vs. Chester A. Arthur. Summons. Stanley, Brown & Clarke, plaintiffs' attorneys, 16 Wall st., New York. To Chester A. Arthur, esq.
4 Received May 15, 1874. U. S. attorney's office. Rec'd May 14, '74.

5 The President of the United States of America to the judges of superior court of the city of New York, greeting:

We, for certain reasons, being desirous that our circuit court of the United States for the southern district of New York, in the second circuit, shall be certified of a certain cause commenced before you, against Chester A. Arthur, defendant, by Herman Fleitman et al. *et al.*, plaintiffs, do therefore command you, that the record and proceedings in the said cause you distinctly and openly send to the said circuit court, at the city of New York, on the 27th day of June, 1874, as fully and amply as the same are remaining before you, by whatever names the said parties may be called therein, together with this writ, that our said court may cause to be further done therein what of right ought to be done.

Witness Morrison R. Waite, esquire, Chief Justice of the Supreme Court of the United States, the 20th day of June, in the year one thousand eight hundred and seventy-four.

[L. S.] KENNETH G. WHITE, *Clerk.*

GEORGE BLISS,
Defendant's Attorney.

(Endorsed:) 3037. U. S. circuit court. Chester A. Arthur ads.
6 H. Fleitman et al. Certiorari. George Bliss, defendant's attorney.

SIR: Take notice that the within is a copy of a certiorari this day issued out of the circuit court of the United States for the southern district of New York.

New York, June 20th, 1874.

Yours, &c.,

GEORGE BLISS,
Defendant's Attorney.

Due service of a copy of the within and of the above notice is hereby admitted.

New York, June 20th, 1874.

STANLEY, BROWN & CLARKE,
Plaintiffs' Attorneys.

7 U. S. circuit court for the southern district of New York, in the second circuit.

Pleas before the judges of the circuit court of the United States of America for the southern district of New York, in the second circuit, at the United States court buildings in the city of New York, of the term of October, 1874, to wit, of the 2nd day of March, in the year of our Lord one thousand eight hundred and seventy-five.

Witness the honorable Alexander S. Johnson, one of the judges of the said circuit court.

JOHN I. DAVENPORT, *Clerk.*

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Be it remembered that heretofore, to wit, on the 2nd day of March, 1875, in October term of the year 1874, before the judges of the circuit court of the United States of America for the southern district of New York, in the second circuit, at the United States court buildings, in the city of New York, came Herman Fleitman, Ewald Fleitman and Frederick Winkhaus, by Stanley, Brown & Clarke, their attorneys, and brought into the said court, before the aforesaid judges thereof, then there, their certain declaration against Chester A. Arthur,
8 being in custody, &c., of a plea of trespass on the case upon promises, which said declaration follows in these words, that is to say:

9 THE UNITED STATES OF AMERICA:

Circuit court of the United States, for the southern district of New York, in the second circuit of the October term, in the year one thousand eight hundred and seventy-four.

HERMAN FLEITMANN ET AL.
vs.
CHESTER A. ARTHUR.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Herman Fleitmann, Ewald Fleitmann and Frederick Winkhaus, copartners composing the firm of Fleitmann & Company, plaintiffs in this suit, come into court, and by Stanley, Brown & Clarke, their attorneys, give the court now here to be informed that, heretofore, to wit, on the 14 day of May last past, this action was commenced in the superior court of the city of New York, according to the laws of the State of New York, and the rules and practice of said court, in favor of the said plaintiffs against the defendant herein, upon the causes of action hereinafter set forth, and the summons therein filed with the clerk of said court. That the defendant afterwards, by his attorney, George Bliss, esquire, duly appeared in said action, and thereupon, on the 27th day of June, in the year one thousand eight hundred and seventy-four, the said action was duly removed by writ of certiorari for further prosecution into this court, according to the act of Congress in such case made and

provided; and the clerk of the said court did thereupon return the said writ with the said summons, and duly file the same in this court,
10 which allegations the defendant admits to be true.

Wherefore, let the further proceedings and trial in this action be continued in this court.

And the said plaintiffs, by their said attorneys, complain of said defendant of a plea of trespass on the case for promises; for that whereas said defendant, on 13th day of May, eighteen hundred and seventy-four, at New York City, in the district aforesaid, was indebted to said plaintiffs in the sum of four hundred dollars, lawful money of the United States of America, for duties on merchandise, to wit, silk and cotton ribbons imported into, and entered at the collection district of the United States, for the city of New York, on or about the first day of November, 1873, and on divers days thereafter until the 1st day of April, in the year one thousand eight hundred and seventy-four, in the following vessels, to wit, New York, Mosel, and Main, from Bremen, and Silisia, from Hamburg, unlawfully demanded, exacted and received at said New York City by the said defendant, then collector of the customs for said district, under color of a law of the United States for the collection of duties on imports, and paid by the said plaintiffs under protest and appeal in writing in due form of law.

And being so indebted, he, the said defendant, in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, at the place aforesaid, undertook and then and there faithfully promised the said plaintiffs well and truly to pay unto the said plaintiffs the said sum of money when he, said defendant, should be thereunto after-
11 wards requested.

And whereas, also, the said defendant afterwards, to wit, on the same day and year last aforesaid, at the place aforesaid, was indebted to the said plaintiffs in the further sum of one thousand dollars, lawful money of the United States of America, for money before that time lent and advanced by said plaintiffs to said defendant, and at the special instance and request of the said defendant; and for other money by the said plaintiffs before that time paid, laid out, and expended for the said defendant, and at the like request of the said defendant; and for other money by the said defendant before that time had and received to and for the use of the said plaintiffs; and being so indebted, the said defendant, in consideration thereof, afterwards, to wit, on the same day and year last aforesaid and at the place aforesaid, undertook and then and there faithfully promised the said plaintiffs well and truly to pay unto the said plaintiffs the said sum of money in this count mentioned, when he should be thereunto afterwards requested;

Nevertheless, said defendant (although often afterwards requested so to do) has not paid said sums of money or any or either of them, or any part thereof, to the said plaintiffs; but to pay the same or any part thereof to the said plaintiffs has hitherto refused, and still does refuse, to the damage of the said plaintiffs of one thousand dollars, and therefore the said plaintiffs bring suit, &c.

STANLEY, BROWN & CLARKE,
Attorney for the Plaintiffs.

12 (Endorsed:) 3037. U. S. circuit court. Herman Fleitmann et al. vs. Chester A. Arthur. Declaration. To George Bliss, esq., def't's att'y. Feb. 20, '75.

13 *Bill of particulars.*

Superior court, city of New York.

HERMAN FLEITMAN AND OTHERS
against
CHESTER A. ARTHUR, COLLECTOR OF THE customs of the United States at the port of New York.

SIR: Please to take notice that the following is the bill of particulars of items of the plaintiffs' demand in the above entitled action, to wit, moneys exacted by compulsion and duress, and under color of the revenue laws of the United States by the defendant as collector, as aforesaid, from and paid by the plaintiffs on merchandise imported by the plaintiffs, as per schedule hereto annexed, with legal interest on said amount from the date of payment thereof, as aforesaid.

Dated New York, June 16, 1874.

To GEORGE BLISS, Esq., *Defendant's Attorney.*

Yours, &c.,

STANLEY, BROWN & CLARKE,
Plaintiffs' Attorneys, No. 16 Wall Street, New York.

Schedule.

IMPORTERS, FLEITMAN & CO.

Description of merchandise.	Place from whence imported.	Name of vessel.	Date of invoice.	Date of entry at custom-house.	Amount of duty paid.
Silk and cotton, segar ribbons.	Bremen.	New York.	November 29, 1873.	Jan. 31, 1874.	968 60
Do	do	Mosel.	November 11, 1873.	Dec. 9, 1873.	80 25
Do	Hamburg.	Silesia.	October 24, 1873.	Nov. 19, "	57 10
Do	Bremen.	Main.	Jan. 31, 1874.	March 3, 1873.	74 30

Description of Merchandise.	Date of payment of duty.	Date of filing protest.	Date of appeal to the Secretary of the Treasury.	Date of answer of the Secretary of the Treasury.
Silk and cotton, segar ribbons.	Jan. 30, 1874.	Jany. 31, 1874.	Jany. 31, 1874.	Feb. 19, 1874.
Do	" 13, "	" 23, "	" 23, "	" 21, "
Do	" 9, "	" " "	" " "	" " "
Do.	April 3, "	April 4, "	April 4, "	May 1, "

(Endorsed:) 3037. N. Y. superior court. Herman Fleitman et al. against Chester A. Arthur, collector of the customs of the United States at the port of New York. Bill of particulars. Stanley, Brown & Clarke, attorneys for plaintiff, No. 16 Wall street, N. Y. To Geo. Bliss, esq., def'ts' att'y. June 19, '74.

14 *Plea.*

United States circuit court southern district of New York.

CHESTER A. ARTHUR
ads.
HERMAN FLEITMAN & AL.

And the said defendant, Chester A. Arthur, by George Bliss, his attorney, comes and defends the wrong and injury, when, &c., and says that he did not undertake and promise, in manner and form as the said plaintiffs in this suit have above thereof declared against the said defendant, and of this he puts himself upon the country, and the said plaintiffs do the like, &c.

GEORGE BLISS,
Defendant's Attorney.

To STANLEY, BROWN & CLARKE, Esq.,
Plaintiff's Attorneys.

(Endorsed:) 3037. U. S. circuit court. Chester A. Arthur ads. Herman Fleitman & al. Plea. George Bliss, attorney for defendant

Due service of a copy of within is hereby admitted.
New York, March 2, 1875.

STANLEY, BROWN & CLARKE,
Plffs' Att'ys.

You will please take notice that the plea of the defendant in the above cause, of which the within is a copy, was this day filed in the
15 office of the clerk of the U. S. circuit court for the southern district of New York.
New York, March 2, 1875.
Yours, &c.,

GEORGE BLISS,
Defendant's Attorney.

To STANLEY, B. & C., Esq.,
Plaintiffs' Attorney.

16 Therefore the issue above joined is ordered by the said circuit court to be tried at the circuit court appointed to be held at the United States court building, in the city of New York, on the third Monday of October, 1876.

And now at this day, to wit, the third Monday of October, 1876, before the said judges of the said circuit court at the United States court building, in the city of New York, comes the said defendant, by his attorney aforesaid, and Nathaniel Shipman, esquire, district judge of the United States for the district of Connecticut, in the second circuit, before whom the said issue was tried hath sent hither his record had in these words:

Afterwards, that is to say, on the twentieth day of October, 1876, and at the place before mentioned, before Nathaniel Shipman, esquire, district judge of the United States for the district of Connecticut, in the second circuit above named, according to the form of the statute in such case made and provided, come as well the above-named plaintiffs as the above-named defendant, by their respective attorneys aforesaid,

and the jurors of the jury summoned to try the said issue being called also come, who to speak the truth of the matters aforesaid, being chosen, tried, and sworn, say upon their oath that the said defendant did not undertake or promise, in manner and form as the said plaintiff's have above complained against him.

17 Therefore it is considered that the said plaintiffs take nothing by their said declaration, but they be in mercy, &c., and that the said defendant go thereof without day, &c.

And it is further considered by the said court now here that the said defendant do recover against the said plaintiffs fifty dollars and twenty-one cents for his costs & charges by him about his defence in this behalf laid out and expended, by the said court here adjudged to the said defendant and, with his assent according to the form of the statute in such case made and provided, and that the said defendant have execution thereof, &c.

Judgment signed this 4 day of Dec., 1877.

J. M. DEUEL,
Dep. Clerk.

(Endorsed:) 3037. U. S. circuit court. Chester A. Arthur advs. Herman Fleitman & others. Judgment record. Geo. Bliss, atty. for deft. Costs, $50.21. U. S. circuit court. Filed Dec. 4, 1877. John I. Davenport, clerk.

18 *Engrossed bill of exceptions.*

United States circuit court, southern district of New York.

HERMAN FLEITMANN, EWALD FLEITMANN, and Frederic Winkhaus,
vs.
CHESTER A. ARTHUR.

This cause came on for trial at a circuit court of the United States held at the city of New York, before his honor Mr. Justice Shipman, and a jury, on the 20th day of October, 1876; and the plaintiffs, to sustain the issues on their part, proved that they were copartners at the several dates referred to in the declaration and bill of particulars, and that they made several importations of cigar ribbons into the port of New York between the 18th day of November, 1873, and the 4th day of March, 1874. That upon these importations the defendant assessed and plaintiffs paid a duty of sixty per cent. ad valorem.

That said rate of duty was paid under protest in due form of law, by which protest plaintiffs claimed that said goods were liable to a duty of 50 % only, as manufacturers of which silk is the component of chief value, not otherwise provided for. It also appeared that plaintiffs duly appealed to the Secretary of the Treasury, and brought this suit in due time.

The invoices and entries described the goods in question as "silk & cotton segar ribbons."

19 Plaintiffs further proved that there was in fact more or less cotton in all the cigar ribbons which form a portion of the importations aforesaid, but that all of said ribbons contained silk as the component material of chief value.

The plaintiffs having rested, the defendant's counsel called a witness, who, being duly sworn, testified as follows:

That he was in the lace, ribbon, and fancy dry goods business; was familiar with the different ribbons known in the market, bought, sold, and used here. He was then asked the following question:

Q. Describe, as to the material, the ribbons that are ordinarily bought and sold in this market under the general description in trade of silk ribbons?

(Objected to by plaintiffs' counsel as immaterial, irrelevant, and improper at this stage of the case, on the ground, first, that it would not follow because certain ribbons composed of any known materials are bought and sold in this market as silk ribbons, that the ribbons which were imported by these plaintiffs were so bought and sold. Secondly, because it did not appear that the witness was an expert and had knowledge of the class of ribbons comprised in the importations in suit, namely, segar ribbons; and thirdly, because it was not competent for the defendant to show commercial designation.)

Q. How long have you been engaged in the ribbon business?

A. Thirty years.

Q. In wholesale houses generally?

A. Wholesale and retail.

20 By counsel for pl'ffs:

Q. Have you ever dealt in segar ribbons?

A. Not generally; no.

Q. Did you deal in them in 1873?

A. No.

Q. And thereupon said objection was overruled by the court; to which ruling plaintiffs' counsel then and there duly excepted.

The said witness further testified that there were various articles received in trade and commerce in 1873, and as far back 1864, under the general name of silk ribbons; that these articles were sometimes made entirely of silk, and sometimes of silk and cotton, but that silk was always their component material of chief value. That these articles were known under a great many different names, such as taffetas, lutestring, gross-graines, and cord-edge, but that their general designation in trade and commerce was silk ribbons.

Being cross-examined by plaintiffs' counsel, he said that in some instances the trade generally knew there was cotton in these ribbons. That he knew of a ribbon with threads of cotton in the edge, and it is known in the trade as silk ribbon. That said ribbons with cord edge were imported for a great many years prior to 1864, and since that time also.

Whereupon defendant's counsel rested, and plaintiffs' counsel called in rebuttal Frederic Winkhaus, who, being duly sworn, testified

21 that his firm commenced to import ribbons of the same class as those in suit before June, 1864, and had imported them and dealt in them largely since that time. That during all that time said goods were usually sold in the trade as silk and cotton ribbons, but that they also went under the designation of cigar ribbons, which was their general designation.

Plaintiffs' counsel called as a witness in rebuttal Charles F. Homer, who, being duly sworn, testified that he had been in the ribbon business since late in 1862, or early in 1863, and during that time had been connected with three or four importing houses.

Plaintiffs' counsel then asked witness if he knew a ribbon called a boyeux ribbon; and to this question defendant's counsel objected;

which objection was sustained by the court; and to said ruling plaintiffs' counsel duly excepted.

The witness further testified that the term silk ribbons had been, during witness' experience in said business, a general term, known as ribbons, and for such as were all silk. That there were various particular designations used for different kinds of ribbons, such as "grosgrain," "taffeta," "faille taffeta," "boyeux," and others, which particular designations imply both silk ribbons and silk and cotton ribbons.

Whereupon plaintiffs' counsel rested, and requested the court to direct a verdict in favor of the plaintiffs; which request the court then and there refused; and to such refusal plaintiffs' counsel then and there duly excepted.

22 The court then charged the jury, among other things, as follows:

"In my opinion the statute intended to say that on all silk ribbons, or all ribbons substantially made of silk, although there might be a slight admixture of cotton in them, on all ribbons substantially made of silk, of which the material part was silk, the proper duty is sixty per centum ad valorem, and therefore your duty is to inquire, in the first place, whether these ribbons were substantially made of silk, although they might have a slight admixture of cotton—some admixture of cotton in them. Still, if they are found by you to be substantially silk ribbons, your verdict should be for the defendant; for, in that case, they would be dutiable under the general class 'all silk ribbons,' and be dutiable at 60 per cent., unless it should be found by you that although these articles were substantially silk ribbons, yet that, by general and well-known commercial usage existing among importers and wholesale dealers in this article at the time of the passage of the act, goods of this character, although they were made substantially of silk, were in commercial designation taken out of the term silk ribbons, and considered to be, for the purpose of commerce, not silk ribbons, but a different article, commercially speaking.

"If, therefore, you find that these articles were substantially made of silk, your duty is to find for the defendant, unless you should be satisfied by a preponderance of testimony that these articles have

23 been taken in commercial designation out of the denomination of silk ribbons, and commercially regarded as different from silk ribbons; in that case your duty would be to find for the plaintiffs.

"On the other hand, if you find that these articles, although they were not substantially made of silk, yet, if you are satisfied by a preponderance of testimony upon the part of the defendant that commercial usage has declared these to be silk ribbons, then your duty is to find for the defendant."

And to such charge the plaintiffs' counsel then and there duly excepted.

The court further charged the jury:

"The point which the plaintiffs must establish in case you find that these articles are substantially composed of silk is this: that this article has been taken out of the general term 'silk ribbons,' and placed in another and different commercial denomination; and the mere fact that they are called cigar ribbons does not of itself prove that fact.

"They must go further, in my judgment, and prove not only that they are called by a minor designation as cigar ribbons, but that commercially speaking they are not regarded as silk ribbons."

And to such charge the plaintiffs' counsel then and there duly excepted.

The court further charged the jury.

"You have a right to look at the invoices and see what names are given to them in the invoices. It is a mere circumstance to be
24 taken by you into consideration. It is not, in my judgment, a material circumstance, or a very important circumstance. It is simply a circumstance to be taken into consideration."

And to such charge plaintiffs' counsel then and there duly excepted.

Plaintiffs' counsel furthermore requested the court to charge the jury that as it appeared by the invoices that the goods were silk and cotton ribbons, in the absence of countervailing testimony the jury must find for the plaintiffs.

Which request the court refused on the ground that it was not necessary to charge either in accordance or not in accordance with this request, by the condition of the testimony in this case.

And to such refusal the plaintiff's counsel then and there duly excepted.

Plaintiff's counsel also requested the court to charge the jury that the designations of the ribbons as silk and cotton ribbons is a circumstance from which the jury were entitled to find, in the absence of opposing testimony, that said goods are commercially known as silk and cotton ribbons.

Which request the court refused, saying there was opposing testimony, and therefore it was not called upon to give that instruction.

And to such refusal and statements plaintiffs' counsel then and there duly excepted.

And to that portion of the charge which, in case a finding that
25 the goods were substantially silk ribbons, required the plaintiffs to establish, by a preponderance of proof, that in commercial designation they had been regarded as not silk ribbons, the plaintiffs' counsel excepted.

Then the jury having retired, afterwards returned into court and rendered a verdict for the defendant.

And inasmuch as the matters aforesaid do not appear upon the record, the plaintiffs' counsel has caused this bill of exceptions to be made, and the same was duly settled on the 23d day of January, 1877, nunc pro tunc as of the 20th day of October, 1876.

[L. S.] N. SHIPMAN,
Judge.

(Endorsed:) No. 21. U. S. circuit court, so. dist. of N. Y. Herman Fleitmann et al., plaintiffs, against Chester A. Arthur, defendant. Engrossed bill of exceptions. Stanley, Brown & Clarke, attorneys for pl'ffs, 16 Wall street, New York. Filed Feb'y 1st, 1877.

26 *Bond for costs.*

Circuit court of the United States of America, for the southern district of New York, in the second circuit.

HERMAN FLEITMANN, EWALD FLEITMANN, & Frederic Winkhaus, pl'ffs,
vs.
CHESTER A. ARTHUR, DEF'T.

Know all men by these presents, that we, Julius Birge, of No. 44 Exchange Place, in the city of New York, and William M. Waterbury, jr., of the same place, are held and firmly bound unto the above named

Chester A. Arthur, in the sum of two hundred & fifty dollars, to be paid to the said Chester A. Arthur; for the payment of which well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated the day of in the year of our Lord one thousand eight hundred and seventy-eight.

Whereas the above named plaintiffs have prosecuted a writ of error to the Supreme Court of the United States, to reverse the judgment rendered in the above entitled suit, by the judge of the circuit court of the United States for the southern district of New York:

Now, therefore, the condition of this obligation is such, that if the above named plaintiffs shall prosecute said writ of error to effect and answer all damages and costs if they shall fail to make said writ of error good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

JULIUS BIRGE, [L. S.]
44 Exchange Place, New York.
W. M. WATERBURY, JR.,
44 Exchange Place, New York.

Sealed and delivered, and taken and acknowledged, this 12 day of March, 1878, before me.

MELVIN BROWN,
Notary Public, N. Y. City & Co.

27 UNITED STATES OF AMERICA,
Southern District of New York, ss:

Julius Birge and William A. Waterbury, jr., severally being duly sworn, doth depose and say, each for himself, that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

JULIUS BIRGE,
W. M. WATERBURY, JR.

Sworn to this 12th day of March, A. D. 1878, before me.

MELVIN BROWN,
Notary Public, N. Y. City & Co.

(Indorsed:) Vol. , page . U. S. circuit court. Herman Fleitmann et al. vs. Chester A. Arthur. Bond for damages, costs on writ of error. Stanley, Brown & Clarke, att'ys for plffs, 195 Broadway. Approved March 14, 1878. Sam'l Blatchford. Filed this 16 day of March, 1878.

28 Supreme Court of the United States, of October term, in the year of our Lord one thousand eight hundred and seventy-eight.

HERMAN FLEITMANN, EWALD FLEITMANN, Frederic Winkhaus, plaintiffs in error,
v.
CHESTER A. ARTHUR, DEFENDANT IN ERROR.

Afterwards, to wit, on the second Monday of October, in this same term, before the justices of the Supreme Court of the United States, at the Capitol in the city of Washington, came the said Herman Fleitmann, Ewald Fleitmann, and Frederic Winkhaus, by Stanley, Brown & Clark, their attorneys, and say that in the record and proceedings
29 aforesaid there is manifest error in this, to wit, in the several

rulings of the court upon the rejection or admission of testimony to which exception has been taken; also that there was error in the refusal of the court to direct a verdict for the plaintiffs in error, as therein prayed for; also that there was error in the several directions of the court to the jury to which exception has been taken, and in the refusal of the court to instruct the jury as prayed for by the plaintiffs in error; also that judgment was given for the defendant in error against the plaintiffs in error, whereas, by the law of the land, judgment ought to have been given for the plaintiffs in error against the defendant in error.

And the said plaintiffs in error pray that the judgment aforesaid may be reversed, annulled, and altogether held for naught, and that they may be restored to all things which they have lost by occasion of the said judgment.

STANLEY, BROWN & CLARKE,
Att'ys for Pl'ffs in Error.

(Endorsed:) U. S. Supreme Court. Herman Fleitmann et al., plaintiffs in error, against Chester A. Arthur, defendant in error. Assignment of error. Stanley, Brown & Clarke, att'ys for pl'ffs in error. U. S. circuit court. Filed Aug. 16, 1878. John I. Davenport, clerk.

Supreme Court of the United States, of October term, in the year of our Lord one thousand eight hundred and seventy-eight.

HERMAN FLEITMANN, EWALD FLEITMANN & Frederick Winkhaus, plaintiffs in error,
vs.
CHESTER A. ARTHUR, DEFENDANT IN ERROR.

And afterwards, to wit, on the second Monday of October, 1878, the said Chester A. Arthur, defendant in error, by Stewart L. Woodford, his attorney, comes here into court and says that there is no error either in the record or proceedings aforesaid, or in the giving of the judgment aforesaid. And he prays that the said Supreme Court before the justices thereof now here may proceed to examine as well the record and proceedings aforesaid as the matters aforesaid above assigned for error, and that the judgment aforesaid in form aforesaid given may be in all things affirmed, &c.

STEWART L. WOODFORD,
Attorney for Defendant in Error.

(Endorsed:) U. S. Supreme Court. Herman Fleitmann et al., pl'ffs in error, vs. Chester A. Arthur, def't in error. Joinder in error. Stewart L. Woodford, U. S. att'y & att'y for def't in error, U. S. circuit court. Filed August 17, 1878. John I. Davenport, clerk.

UNITED STATES OF AMERICA, *ss:*

To Chester A. Arthur, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October, eighteen hundred and seventy-eight, pursuant to a writ of error, filed in the clerk's office of the circuit court of the United States for the southern district of New York, wherein Herman Fleitmann, Ewald Fleitmann and Frederic Winkhaus are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why the

judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Dated, New York, March 14th, 1878.

SAM'L BLATCHFORD.

34 (Indorsed) 3037. U. S. Supreme Court. Herman Fleitmann et al., plaintiffs in error, against Chester A. Arthur, defendant in error. Original citation. Stanley, Brown & Clarke, att'ys for pl'ffs, 195 B'way. U. S. circuit court. Filed Mar. 18, 1878. John I. Davenport, clerk.

Due service of a copy of the within is hereby admitted.

N. Y., March 18, 1878.

STEWART L. WOODFORD,
U. S. Att'y.

(Indorsement on cover:) No. 504. Herman Fleitman, Ewald Fleitman & Frederick Winkhaus, plaintiffs in error, vs. Chester A. Arthur, collector of the port of New York. S. New York C. C. U. S. Filed 4th October, 1878.